IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1143 OF 2006

IN

CRIMINAL APPEAL NO. 907 OF 2006

EMPLOYEE'S STATE INSURANCE CORPORATION ..APPLICANT

V/S

S.D. HINDUJA & ORS. ..RESPONDENTS

SHRI H.V. MEHTA - PP FOR UNION OF INDIA.

MR. Y.S. SHINDE - APP FOR STATE.

CORAM: V.M. KANADE, J.

DATE : 17TH OCTOBER, 2007.

P.C.

1. Heard learned counsel appearing on behalf of the Applicant. None appears on behalf of the Respondents though they are served. The Applicant is challenging the Judgment and Order passed by the Metropolitan Magistrate, 7th Court, Dadar, Mumbai, whereby the learned Magistrate was pleased to dismiss the complaint for default. The learned counsel for the Applicant submits that the applicant shall remain present regularly and in fact warrant which was issued against the accused was pending and inspite of that the learned Magistrate was pleased to dismiss the complaint for want of prosecution.

2. It is settled position of law that the complaint should not be dismissed under the provisions of section 256 of the Code of Criminal Procedure merely because the complainant is absent on a particular date. In this case the warrant has been issued against the accused and the said warrant was not executed and as such the presence of the complainant was not necessary. Application is allowed. The order passed by the Magistrate therefore be set aside. Criminal case is restored to file. Learned Magistrate to decide the criminal case on merits and in accordance with law. Criminal Application and Criminal Appeal are accordingly disposed of.

(V.M. KANADE, J)